

LAW ENFORCEMENT AVAILABILITY PAY

§ 550.181 Coverage.

Each criminal investigator meeting the definition in § 550.103, and the conditions and requirements of 5 U.S.C. 5545a and the regulations in §§ 550.181 through 550.187, shall receive availability pay to ensure the availability of criminal investigators for unscheduled duty in excess of the 40-hour workweek based on the needs of the employing agency.

[59 FR 66151, Dec. 23, 1994, as amended at 60 FR 67287, Dec. 29, 1995]

§ 550.182 Unscheduled duty.

(a) *Unscheduled duty hours.* For the purpose of availability pay, unscheduled duty hours are those hours during which a criminal investigator performs work, or is determined by the employing agency to be available for work, that are not—

(1) Part of the 40-hour basic workweek of the investigator; or

(2) Overtime hours compensated under 5 U.S.C. 5542 and § 550.111 (which are those overtime hours scheduled in advance of the investigator's administrative workweek, excluding any such hours that are the first 2 hours of overtime work on any day containing a part of the investigator's basic 40-hour workweek, as required by § 550.111(f)).

(b) *Actual work hours.* To be considered to be performing work under paragraph (a) of this section, a criminal investigator must be performing work as officially ordered or approved, including work performed without specific supervisory preapproval, if circumstances require the criminal investigator to perform the duty to meet the needs of the employing agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval).

(c) *Availability hours.* To be considered available for work under paragraph (a) of this section, a criminal investigator must be determined by the employing agency to be generally and reasonably accessible to perform unscheduled duty based on the needs of the agency. Generally, the agency will place the investigator in availability status by directing the investigator to be available during designated periods

to meet agency needs, as provided by agency policies and procedures. Placing the investigator in availability status shall not be considered scheduling the investigator for overtime hours compensated under 5 U.S.C. 5542 and 5 CFR 550.111. Availability hours may include hours during which an investigator places himself or herself in availability status to meet the needs of the agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval).

(d) *Ensuring availability.* Except as provided in paragraphs (e) and (f) of this section, an employing agency shall ensure that each criminal investigator's hours of unscheduled duty are sufficient to enable the investigator to meet the substantial hours requirement in § 550.183 and make the certification required under § 550.184.

(e) *Voluntary opt-out.* Notwithstanding paragraph (d) of this section, an employing agency may, at its discretion, approve a criminal investigator's voluntary request that the investigator generally be assigned no overtime work (including unscheduled duty) for a designated period of time because of a personal or family hardship situation. The investigator must sign a written statement documenting this request and his or her understanding that availability pay will not be payable during the designated period.

(f) *When availability pay is suspended.* The employing agency is not subject to the requirement of paragraph (d) of this section in the case of a criminal investigator for whom availability pay is suspended in accordance with § 550.184(d) due to denial or cancellation of the required certification based on—

(1) Failure to perform unscheduled duty as assigned or reported; or

(2) Inability to perform unscheduled duty for an extended period because of a physical or health condition.

[59 FR 66151, Dec. 23, 1994]

§ 550.183 Substantial hours requirement.

(a) A criminal investigator shall be eligible for availability pay only if the annual average number of hours of unscheduled duty per regular workday is